THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 11422 OF 1997

Date: 13.02.2007

Between:

The Regional Manager, APSRTC, Kurnool.

... Petitioner.

And

The Authority under Minimum Wages Act and Asst. Commissioner of Labour Kurnool and 40 others.

... Respondents.

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 11422 OF 1997

ORDER:

The Regional Manager A.P.S.R.T.C, Kurnool is before this Court seeking to have the orders passed in M.W. Case No. 129 of 1995 dated 13.09.1996 quashed.

M.W. Case No. 129 of 1995, relates to an application filed by Sri N. Subba Rao and 38 others under the Minimum Wages Act against Sri B. Penchalaiah, contractor of the A.P.S.R.T.C, and the Regional Manager, A.P.S.R.T.C for non-payment of the notified wages to the contract labour engaged for cleaning and sweeping at the A.P.S.R.T.C Bus station, Kurnool.

While the contractor who was arrayed as an opposite party did not file his counter affidavit, the petitioner corporation, which was arrayed as O.P.2, filed its counter before the authority under the Minimum Wages Act. The petitioner herein denied that the applicants were the employees of the corporation. While admitting that sweeping work was given to the contractor i.e., O.P.1 on tender basis it was stated on behalf of the corporation that the first opposite party was called upon to engage 12 workers per day and that he had, in fact, engaged 12 workers and maintained registers for that extent, and that the applicants had never worked at the relevant point of time. It is also the case of the Corporation that all the records were with the first opposite party. The petitioner denied that the applicants were paid less wages. Some of the

applicants were examined as AW-1 to AW-6 whereas the Superintendent of the office of the Regional Manager, A.P.S.R.T.C, Kurnool was examined as RW-1. He deposed that, as per the records, no complaint was received from the workers that minimum wages were not paid during the period, that the first opposite party, who was then engaged as a contractor, had left long back, that the applicants and the first opposite party had colluded and had filed this claim petition and, since the first opposite party had already withdrawn his deposit, the petitioner herein was not liable to pay the amount. The authority, under the Minimum Wages Act, observed that O.P. 2 i.e., the petitioner had given sweeping work to the contractor at the A.P.S.R.T.C bus station and that A.Ws- 1, 3, 4 and 5 had stated that 39 employees were engaged by the first opposite party. The authority referred to Rule 74 of the A.P. Contract Labour (Regulation and Abolition) Rules, 1971 which requires the principal employer to maintain a register of contractors in Form XII which requires the maximum number of workers engaged by the contractor to be specified therein and, since this statutory register which the petitioner was required to maintain had not been produced, the authority under the Minimum Wages Act held that 39 workers had been engaged by the contractor. The authority also held that the petitioner was a public Motor Transport service which was a scheduled employment under the Minimum Wages Act. With regards the allegation of collusion, the authority held that, except for the oral testimony, no documentary evidence was filed in support of the statement. The application was allowed and both opposite parties

were jointly and severally held responsible for payment of the amount. Both of them were directed to deposit Rs.71,487/- each for a period of six months.

Before this Court, while the submissions made before the authority under the Minimum Wages Act is reiterated, it is also stated that the Contractor was required to engage only 12 workers and since 12 workers were engaged, it was clear that the claim made by the 39 applicants was false and was only to enrich themselves at the cost of the corporation.

Sri P. Vinayakaswamy, learned Counsel for the petitioner would submit that clause 13 of the deed of licence of the contractor would show that only 12 workers were required to be engaged. Reliance is placed on the licence deed dated 20.08.1985 and 18.10.1989. Since these documents were not marked as exhibits before the authority under the Minimum Wages Act, no reference can be made thereto in certiorati proceedings. Even otherwise the said licence deed filed for the first time before this Court is of no assistance to the petitioner corporation. Clause 13 of the licence deed dated 20.08.1985 requires the licensee to employ a minimum number of five persons to carry out the works. Similarly the licence deed dated 18.10.1989 requires the licensee to employ a minimum number of 12 persons to carry out the above workers. What is stipulated in both these licence deeds is the minimum number of workers and not the maximum.

Section 21(4) of the Contract Labour (Regulation and Abolition) Act provides that in case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction of the amount paid from any amount payable to the contractor under any contract or as a debt payable by the contractor. Rule 74 of the A.P. Contract Labour (Regulation and Abolition) Rules 1971 requires a register of contractors to be maintained by principal employer in Form XII. Form XII which is the register of contractors also requires, at column 7, details relating to the maximum number of workers employed by the contractor to be shown therein. The register of contractors, under Rules 74 read with Form XII, is a statutory register required to be maintained by the principal employer. It is not in dispute that the petitioner herein is the principal employer and the first opposite party before the authority under the Minimum Wages Act was its contractor. Since these statutory registers would indicate the maximum number of workers employed by the contractor, the authority under the Minimum Wages Act has rightly drawn adverse inference, for the inability of the petitioner to produce the said register, in coming to the conclusion that all the 39 applicants were engaged by the contractor. Both the principal employer and the contractor were held jointly and severally liable for payment of the amount. The order of the Minimum Wages Authority does not suffer from any

illegality necessitating interference in certiorari proceedings under Article 226 of the Constitution of India. The writ petition fails and is accordingly dismissed. It is made clear that this order shall not preclude the petitioner herein from recovering the amount from the contractor as provided for under Section 21(4) of the Contractor Labour (Regulation and Abolition) Act. No costs.

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Date: 13.02.2007 RAMESH RANGANATHAN, J

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